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LAW OFFICES

ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

888 SIXTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-4103

202-296-8600

TELECOPIER  
202-296-8791

150 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS 60601-7567  
312-556-1000

PARK AVENUE TOWER  
65 EAST 55TH STREET  
NEW YORK, NEW YORK 10022-3219  
212-421-5555

590 HOWARD AVENUE  
SOMERSET, NEW JERSEY 08875-6739  
908-563-2700

January 13, 1993

STEPHEN R. ROSS

**HAND-DELIVERED**

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Tier Buy-Through Prohibitions  
MM Docket No. 92-262

Dear Ms. Searcy:

Enclosed on behalf of InterMedia Partners, are the original and nine copies of InterMedia's Comments in the above-referenced proceeding.

Please address any questions concerning this letter to the undersigned.

Cordially,

  
Stephen R. Ross

SRR/sdb  
Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION  
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## Tier Buy-Through Prohibitions

InterMedia is submitting the following comments on only two of the issues raised in the NPRM: the provision of addressable converters to subscribers; and the pricing schemes consistent with the anti-buy through provision of the Act. Both matters involve defining whether or not a given activity discriminates against subscribers to the basic service tier.

## II. Provision and Pricing of Addressable Converters

Reflective of the composition of many MSOs, a portion of InterMedia's systems employ addressable technology in whole or in part. As an initial matter, InterMedia submits that those systems which are addressable will comply with the anti-buy through provision of the Act as implemented in this proceeding. As its non-addressable systems employ addressable technology, those systems will also meet the requirements of tier buy-through provision.

The Commission seeks comment on whether all subscribers on an addressable system must be provided with addressable converters, and if so, what flexibility the cable operator has in setting prices for such equipment. NPRM at ¶ 8. InterMedia asserts that the Act requires operators to provide all subscribers with the equipment necessary to access the service(s) which that subscriber has selected. However, the Act does not require operators to provide all subscribers with the same equipment. Rather, consistent with the anti-discrimination provisions of the Act, different converters could be provided to different subscribers consistent with their service requirements. An additional charge for certain converters is appropriate.<sup>1/</sup>

Subscribers who subscribe only to the basic service tier are provided with a non-addressable converter which is capable of

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<sup>1/</sup> In all cases, InterMedia will charge for addressable converters intended to receive premium pay per channel and pay per-view services.

accessing only the basic tier, if a converter is required at all. These "basic-only" converters are less expensive and cannot access the other programming services offered by an InterMedia system.

Customers who subscribe to basic plus specific premium pay channels and pay per view events ("the pay services") selected by the subscriber are provided with InterMedia's "standard" addressable converter. This converter is capable of accessing both the basic tier and pay services. In contrast, InterMedia's customers who subscribe to the combination of the basic service tier, other cable programming tier(s) and in many instances pay services are offered a "deluxe" addressable converter.<sup>2/</sup> This converter is an expensive, sophisticated model and a separate higher charge is assessed for its use. If it does not subject the converter to basic rate regulation, InterMedia will permit customers who subscribe to "basic" to lease the "deluxe" converter at the normal, monthly charge. However, if the Commission determines that all converters used by basic-only customers, even if selected as a discretionary purchase, will subject the converter to basic rate regulation, deluxe converters will not be offered to basic-only subscribers.

All of the marketing efforts discussed above are designed to insure that the subscriber gets to choose a service tailored to his or her needs without utilizing unnecessary and expensive equipment. Consequently, InterMedia urges the Commission to

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<sup>2/</sup> In many cases basic, tier, a deluxe converter and one or more pay services are offered as a "package" to the customer.

recognize that the provision of a non-addressable "basic" converter to access basic service is merely consistent with what is technically required. To require otherwise would unnecessarily increase the cost to the basic service subscriber which is inconsistent with the Act. It also increases the risk to the cable operator of unauthorized reception of premium programming.

Moreover, providing basic service subscribers with a "basic" converter is not "discriminatory" under the anti-buy through provision. InterMedia submits that the discrimination prohibition of the Act does not require the operator to provide all subscribers with the identical type of converter as long as functionality is provided. Similarly, allowing subscribers who receive a "standard" converter as part of their program package to upgrade to a "deluxe" converter at an additional monthly charge is very much consistent with the Act. Cable operators must have the flexibility to market their services, and to permit discretionary purchases by the consumer, in a manner which includes consumer equipment. InterMedia's concludes that its conduct is consistent with the efforts of Congress to insure the widest possible access to basic cable service at the lowest and fairest prices.

### III. Non-Discriminatory Program Pricing Schemes

The Commission has also solicited comment on what kind of program pricing schemes would be consistent with the buy-through prohibition. NPRM at ¶ 8. As the Commission recognizes, multiple channel discounts provide operators with some marketing flexibility

and benefit subscribers as well. Clearly, Congress did not intend that cable operators be permitted to offer premium channels only on an a la carte basis. If an operator chooses to market a group of two or more premium channels at a discounted rate, this cannot be considered discriminatory. Of course, subscribers will still be able to subscribe to individual premium channels. However, those subscribers would not receive the benefit of the multiple channel discount, and would be charged the per-channel price.

In addition, cable operators should not be required to offer certain specific programming services on a stand-alone basis merely because systems have traditionally done so in the past. The operator must have some degree of flexibility to market its programs and services. For example, if an operator wishes to offer to subscribers several traditionally stand-alone channels as a package, then the operator should not be precluded from doing so. Similarly, stand-alone premium channels offered as a package should not lose their status as premium channels and become a "tier" as long as the same channels are also offered on an individual basis.

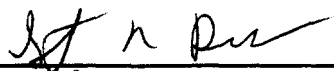
Furthermore, all systems which comprise a particular MSO cannot be required to offer the same multiple channel discounts or premium channel packages. It is not discrimination to allow different systems owned by an MSO to create service offerings on an individual system basis which caters to the unique needs of the community served.

**IV. Conclusion**

For the foregoing reasons, InterMedia Partners urges the Commission to consider its comments offered herein, and to incorporate them into its final rules in this proceeding.

Respectfully submitted,

INTERMEDIA PARTNERS

By:   
Stephen R. Ross  
Kathryn A. Hutton

ROSS & HARDIES  
888 16th Street, N.W.  
Suite 300  
Washington, D.C. 20006  
(202) 296-8600

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